(17,759.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No 279.

S. A. AND S. C. HASELTINE, PLAINTIFFS IN ERROR,

vs.

THE CENTRAL NATIONAL BANK OF SPRINGFIELD, MISSOURI.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

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1 UNITED STATES OF AMERICA, *sct:*

The President of the United States of America to the judges of the supreme court of Missouri, division No. 1, Greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said supreme court, before you, between S. A. and S. C. Haseltine and The Central National Bank of Springfield, Missouri, a manifest error hath happened, to the great damage of the said S. A. and S. C. Haseltine, as by their complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington, D. C., not exceeding thirty days from the date of signing the citation, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court. Issued at office, in Springfield, this 19th day of March, A. D. 1900.

{ Seal of the United States Circuit Court, Southern Division of the Western Judicial District of Missouri. }

SARAH A. LATHIM, *Clerk*,
By REUBEN Y. THOMSON,
Deputy Clerk.

Allowed.
THEO. BRACE,
P. Judge, Division No. 1, Supreme Court of Missouri.

[Endorsed:] #8867. United States circuit court, southern division of the western district of Missouri. Haseltine *et al. vs.* The Central National Bank. Writ of error. Filed Apr. 5, 1900. Jno. R. Green, clerk.

SOUTHERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI, *sct:*

I do hereby return due and perfect obedience to the within writ, and do herewith, under the seal of said supreme court, distinctly and openly, send the record and proceedings aforesaid, with all things concerning the same.

Witness my hand as clerk and the seal of said court.
Done at office, in Jefferson City, this 16th day of April, 1900.

[Seal of the Supreme Court of Missouri.]

JNO. R. GREEN, *Clerk*,
By —— ——, *Deputy Clerk.*

2 UNITED STATES OF AMERICA, *sct:*

To the Central National Bank of Springfield, Missouri, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, D. C., thirty days from and after the day this citation bears date, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern division of the western district of Missouri and filed in the office of the clerk of the supreme court of Missouri, wherein S. A. Haseltine *et al.* are plaintiff- in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff- in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Theodore Brace, judge of the supreme court of the State of Missouri, this fifth day of April, in the year of our Lord one thousand nine hundred.

THEO. BRACE, *Judge.*

[Endorsed:] # 8867. United States circuit court, southern division of the western district of Missouri. Haseltine *et al. vs.* The Central National Bank. Citation.

UNITED STATES OF AMERICA, }
Western District of Missouri, } *ss:*

I hereby acknowledge due service of the within citation this seventh day of April, A. D. 1900.

MASSEY & TATLOW,
Attorney- for Defendant in Error.

3 In the Supreme Court of the United States, October Term, 1900.

S. H. & S. C. HASELTINE, Appel-ants in Error,
vs.
THE CENTRAL NATIONAL BANK, Respondent in Error.

Assignment of Error and Prayer for Reversal.

Now come appellants in error and state to your honor that error- have been committed by the supreme court of Missouri against the rights of your appellants in the decision against appellants, in this:

I.

Appellants were entitled to the rights they claim in this petition under section 5198 of the Revised Statutes of the United States in 1878, which is denied by the decision in this case by the supreme court of Missouri.

II.

Also said decision of the supreme court of Missouri denies to appellants their claim under the laws of the United States as construed

by the Supreme Court of the United States in care of Brown *vs.* Marion National Bank, 169 U. S., 416.

III.

The supreme court of Missouri denies the rights to the appellants under the United States statute, section 5198, as construed by every court of last resort in the United States, some of which are:

See Nebraska First National Bank *vs.* Smith, 54 N. W. Rep., 254.

See in Pennsylvania, A. Brown *vs.* Second National Bank, 72 Pa., 209.

See in New Jersey, National Bank *vs.* Carpenter, 19 Atlantic Rep., 181.

See in West Virginia, Lynch *vs.* Bank, 2 W. Va., 994.

See in Kentucky, Henderson National Bank *vs.* Alver, 15 S. W., 132.

See in Texas, Stout *vs.* Ennis National Bank, 69 Texas, 384; 8 S. W. Rep., 808.

See in Nebraska, Exeter National Bank *vs.* Orchard, 61 N. W. Rep., 833.

4 See in Pennsylvania, Lebanon National Bank *vs.* Karmany, 98 Pa. St., 65.

Also U. S. Supreme Court, Brown *vs.* Marion National Bank, 169 U. S., 416.

Appellants, being thus deprived of their rights, ask that this case be reversed and appellants be entitled to their rights under the United States Statutes.

S. H. HASELTINE &
GEO. S. RATHBUN.

[Endorsed:] # 8867. In the Supreme Court of the U. S. S. A. & S. C. Haseltine, appellants in error, *vs.* The Central National Bank, def't in error. Assignment of errors & prayer for reversal. Filed Apr. 5, 1900. Jno. R. Green, clerk. Rathbun & Haseltine, att'ys for appellants.

5 STATE OF MISSOURI, *set:*

Be it remembered that heretofore, to wit, on the 5th day of August, 1897, there was filed in the office of the supreme court of the State of Missouri a certified copy of the judgment and order granting an appeal in a certain cause wherein S. A. Haseltine *et al.* were respondents and The Central National Bank of Springfield, Mo., was appellant; which said certified copy of the judgment and order granting an appeal is in words and figures as follows, viz:

Circuit Court, Greene County, January Term, 1897.

42nd Judicial Day, Saturday, March 13th, 1897.

S. A. HASELTINE and S. C. HASELTINE, Plaintiffs, *vs.* THE CENTRAL NATIONAL BANK OF SPRINGFIELD, Mo., a Corporation, Defendants. } Usury. Trial by Court. Judgment for Plaintiff for $831.70.

Now, at this day, come the above parties, plaintiffs and defendants, by their respective attorneys, and this cause coming on to be heard, the said parties announce ready for trial. Thereupon, issue being joined and a jury waived by consent, this cause is submitted to the court for hearing, and the court proceeds to hear the evidence, and, being sufficiently advised in the premises, the court finds the issues in favor of the plaintiffs, and this being an action for usurious interest received by defendants from plaintiffs, whereby the plaintiffs' demand is ascertained, and the court doth assess the amount due and owing from the defendant to the plaintiffs by reason of such usury at the sum of eight hundred and thirty-one dollars and seventy cents ($831.70).

It is therefore considered, adjudged, and ordered by the court that the plaintiffs, S. A. Haseltine and S. C. Haseltine, have and recover of and from the defendant, The Central National Bank of Springfield, Missouri, a corporation, the sum of eight hundred and thirty-one dollars and seventy cents ($831.70), as aforesaid, assessed by the court, with interest thereon, at the rate of eight per cent (8%) per annum, from this date until paid, together with all costs in this behalf laid out and expended for which execution may issue.

6

STATE OF MISSOURI, } *ss:*
County of Greene, }

I, J. M. Yarbrough, clerk of the circuit court within and for the county and State aforesaid, do hereby certify that the above and foregoing is a full, true, and complete copy of the judgment rendered by our Greene county circuit court on the 19th day of March, 1897, same being the 42nd judicial day of the January term thereon, as fully as same appears of record in my office.

In testimony whereof I have hereunto set my hand as clerk of the circuit court and affixed the seal thereof. Done at office, in the city of Springfield, Missouri, this 28th day of July, A. D. 1897.

[SEAL.]

J. M. YARBROUGH, *Cir. Clerk.*

Circuit Court, Greene County, January Term, 1897.

53rd Judicial Day, Saturday, March 27th, 1897.

S. A. & S. C. HASELTINE, Plaintiffs, vs. CENTRAL NATIONAL BANK, Defendant.	Usury. Affidavit for Appeal Filed. Appeal Granted to Supreme Court. Appellant Given until 1st Day of Next Term to File Bill of Ex.

Now, at this day, comes the above defendant, by Attorneys Massey & Tatlow, and files herein its affidavit praying for an appeal from the judgment heretofore rendered herein, and the same being by the court now seen, it is ordered that the appeal be, and is hereby, granted to the supreme court.

It is further ordered that the said *plaintiffs* appellants file herein its bill of exceptions in the above cause on or before the first day of the next term of this court.

STATE OF MISSOURI, } ss:
County of Greene, }

I, J. M. Yarbrough, clerk of the circuit court within and
7 for the county and State aforesaid, do hereby certify that the above and foregoing is a full, true, and complete copy of the order granting an appeal to the supreme court of the above-entitled cause on the 27th day of March, 1897, same being the 53rd judicial day of said term, 1897, as fully as the same appears of record in my office.

I- testimony whereof I have hereunto set my hand as clerk of the circuit court and affixed the seal thereof. Done at
[SEAL.] office, in the city of Springfield, Missouri, this 28th day of July, A. D. 1897

J. M. YARBROUGH, *Cir. Clerk.*

And afterwards, to wit, on the 30th day of November, 1897, the following proceedings were had in said cause, viz:

S. A. & S. C. HASELTINE, Resp., vs. CENT. NAT. BK., App.

Come now the said respondents, by attorney, and file their motion to transfer this cause to the St. Louis court of appeals.

Which said motion is in words and figures as follows, to wit:

In the Supreme Court, —— Term, 1897.

S. A. and S. C. HASELTINE, Respondents,
against
THE CENTRAL NATIONAL BANK, a Corporation, Appellant. } Case No. —.

Appeal from Greene Co. ct. ct., Jan'y term, 1897.

To the above-named appellant and Massey and Tatlow, its att'ys of record:

You are notified that respondents will, on Wednesday, Dec. 1st, 1897, file in said cause in said supreme court their motion asking that said cause be transferred to the Saint Louis court of
8 appeals for the reasons as set forth in said motion, and will request the court to act thereon without delay.

S. A. & S. C. HASELTINE,
Respondents pro Se.

Rec'd a copy of within notice and motion to transfer cause to St. Louis court of appeals this 29th Nov., 1897.

MASSEY & TATLOW,
Att'ys for Appellant.

In the Supreme Court, —— Term, 1897.

S. A. and S. C. HASELTINE, Respondents,
against
THE CENTRAL NATIONAL BANK, a Corporation, Appellant. } Case No. —.

Appeal from the circuit court of Greene Co., Mo., Jan'y term, 1897.

Now, at this day, come the respondents in the above cause and move the court to order a transfer of said cause to the Saint Louis court of appeals, and to direct its clerk to forward the transcript therein, with the order of transfer, to the clerk of said court of appeals, as provided by section 3300 of the Revised Statutes of the State of Missouri (1889), for the following reasons:

1st. Said appeal is improperly taken to said supreme court, and should have been taken to said St. Louis appellate court, which has jurisdiction of the cause.

The amount involved being less than 2,500.00 dollars.

2nd. Nor do the questions at issue, being one of usury, involve the validity of our United States statute or the construction of the constitution of this State or of the United States.

Wherefore respondents, plaintiffs below, ask that said cause be transferred, as aforesaid.

S. A. AND S. C. HASELTINE,
Respondents pro Se.

9 And afterwards, to wit, on the 23rd day of December, 1897, the further following proceedings were had in said cause, viz:

S. A. HASELTINE ET AL., Resp.,
v.
CENTRAL NAT. BK., App.

Now, at this day, the court, having fully considered and understood the motion heretofore filed to transfer this cause to the St. Louis court of appeals, doth order that said motion be, and the same is hereby, overruled.

And afterwards, to wit, on the 10th day of October, 1899, the further following proceedings were had in said cause, viz:

S. A. HASELTINE ET AL., Resp.,
vs.
CENTRAL NAT. BK., App.

Now, at this day, it is ordered by the court that this cause be set with No. 9037, January 13, 1900.

And afterwards, to wit, on the 13th day of January, 1900, the further following proceedings were had in said cause, viz:

CENT. NAT. BK., Resp.,
vs.
S. A. HASELTINE ET AL., App. } 9037.

S. A. HASELTINE ET AL., Resp.,
vs.
CENTRAL NAT. BK., App. } 8867.

Come now the said parties, by attorneys, and, after argument herein, submit these causes to the court.

And on the same day the following abstract of record in this cause was filed, to wit:

10 In the Supreme Court of Missouri, January Term, 1900.

S. A. HASELTINE ET AL., Respondent-.
vs.
CENTRAL NATIONAL BANK, Appellant. } No. 8867.

Abstract of Record and Brief of Appellant.

Appeal from Greene county circuit court.

Pleas before the circuit court of Greene county, at the January term, 1897, before the Honorable James T. Neville, judge of the twenty-third judicial circuit of the State of Missouri.

Petition.

S. A. HASELTINE and S. C. HASELTINE, Plaintiffs,
vs.
THE CENTRAL NATIONAL BANK OF SPRINGFIELD, MISSOURI, Defendant.

Now come plaintiffs and say that the defendant is a banking association or corporation duly organized and doing business as a corporation under the name and style of The Central National Bank by and under authority of the laws of the United States and located at Springfield, Greene county, Missouri.

That said association is indebted to and owes the plaintiffs the sum of $834.00 for and being twice the amount of usurious interest paid by the plaintiffs to said defendant and knowingly re-
11 ceived by said defendant as interest or discount in advance on a note and renewed notes, as hereinafter specified, at a greater rate of interest than allowed by the laws of the State of Missouri and in violation of the provisions of section- 5197 and 5198 of the national bank act, Revised Statutes of the United States.

The particulars of which are as follows, to wit:

Plaintiff- states that on the 25th day of June, 1894, plaintiffs made a note to the defendant for the use of the sum of $2,240 for 60 days' time, with S. I. Haseltine and L. K. Haseltine as security, on which plaintiffs paid usurious discount or interest in advance, and defendant knowingly and usuriously took and received the same in the amount of $39.35, which is 10 per cent. interest on the said sum for the said time, a greater rate of interest than is or was allowed by the laws of the State of Missouri, and in violation of the laws of the United States; and, further, that in an extension of the said loan on which said usurious interest was so paid by the plaintiffs and received by the defendant on the 29th day of October, 1894, the plaintiffs paid the defendant $46.30 for the extension of said note for a further period of 90 days, which usurious interest — knowingly and usuriously received by the defendant in violation of the laws of the United States, by reason of which the defendant became indebted to and owes the plaintiffs twice the said amount of discount so paid as

aforesaid, which amounts to $92.60, for which plaintiffs ask judgment.

Plaintiffs state that on the 30th day of January, A. D. 1895, the plaintiffs made a note to the defendant for the use of the sum of $2,240, with S. I. Haseltine and L. K. Haseltine as securities, for the period of sixty (60) days, on which plaintiffs paid a discount or interest in advance, and the defendant knowingly and usuriously took and received the same, amounting to $39.35, which is ten per cent.
12 interest a greater rate of interest than is or was then allowed by the laws of the State of Missouri, and is in violation of the laws of the State of Missouri and of the United States; by reason of which the defendant became indebted to and owes the plaintiffs twice the said amount of the said interest or discount so paid, as aforesaid, which amounts to $78.70, for which the plaintiffs ask judgment.

Plaintiffs further state that they made renewal of the said note to the said defendant association for the said sum of $2,240, on which plaintiffs paid discount or interest in advance, and defendant knowingly and usuriously took and received the same on the dates for the periods of time on said amount as follows, to wit:

On April 17th, 1895, on the said sum of $2,240 extended for — (60) days' time, for which plaintiffs paid interest or discount in the sum of $39.20, which the defendant knowingly and usuriously received, by which said defendant became indebted to the plaintiffs in the sum of $78.40, for which plaintiffs ask judgment.

Also, further, on the 5th day of June, 1895, on the said sum of $2,240, for the period of sixty (60) days, plaintiffs paid discount and defendant knowingly and usuriously received and took the sum of $39.20, by which defendant owes the plaintiffs the sum of $78.40, for which plaintiffs ask judgment.

Also, further, on the 7th day of August, 1895, on the said sum of $2,240, for the period of (60) sixty days, plaintiffs paid discount and defendant knowingly and usuriously received the sum of $39.20, by reason of which the defendant owes the plaintiffs the sum of $78.40, for which plaintiffs ask judgment.

Also, further, on the 9th day of October, 1895, on said sum
13 of $2,240, for the period of sixty (60) days, plaintiffs paid discount and defendant knowingly and usuriously received the sum of $39.20, by reason of which the defendant owes the plaintiffs the sum of $78.40, for which plaintiffs ask judgment.

Also, further, on the 11th day of December, 1895, on the said sum of $2,240, for the period of ninety (90) days, plaintiffs paid discount and defendant knowingly and usuriously received the same in the sum of $57.85, by reason of which the defendant owes the plaintiffs the sum of $115.70, for which plaintiffs ask judgment.

And also on the 14th day of June, 1896, on the said sum of $2,240, for the period of ninety (90) days, plaintiffs paid discount and defendant knowingly and usuriously received the sum of $57.85, by reason of which the defendant owes the plaintiffs the sum of $115.70, for which plaintiffs ask judgment.

Wherefore, by reason of the premises, the defendant is indebted to

and owes the plaintiffs the sum of $864.00, eight hundred and sixty-four dollars, for which amount the plaintiffs ask judgment and costs.

Which said petition was filed in the office of the clerk of the circuit court of Greene county, Mo., on the 15th day of October, 1896.

Answer.

And afterwards, to wit, on the 12th day of January, 1897, being the 6th day of January term, 1897, of said court, defendant filed herein an answer, which is in words and figures as follows:

(Cause entitled as above.)

"Comes now the defendant and, answering said petition, *and* admits that it is a corporation, as alleged in said petition, and that it is true, as alleged in said petition, that the plaintiffs executed
14 said note, but deny each and every other allegation in said petition contained."

And on the 28th day of January, 1897, being the 20th day of said term, the following proceedings were had in said cause:

(Omitting caption.)

"Now, at this day, comes plaintiffs in above cause, by attorney, and file herein their motion praying the court to advance the above cause on the docket and refer the same to a referee for hearing."

And afterwards, on the 6th day of February, 1897, the 24th day of said term, the following proceedings were had in said cause:

(Caption omitted.)

"Now, at this day, by order of the court, C. W. Hamlin is hereby appointed referee in the above cause to hear and determine all the issues in above cause, as per instructions of the court."

And afterwards, on the 12th day of February, 1897, being the 29th day of said term, the following other proceedings were had in said cause:

(Caption omitted.)

"Now, at this day, comes C. W. Hamlin, referee in above cause, and files herein his report, as such referee, in above cause."

Judgment.

And on the 13th day of March, 1897, being the 42nd day of said term, the following judgment was rendered in said cause, as follows:

"Now, at this day, comes the above parties, plaintiffs and defendant, by their respective attorneys, and, this cause coming on to be heard, the said parties announced ready for trial; thereupon,
15 issue being joined and a jury waived by consent, this cause is submitted to the court for hearing, and the court proceeds

to hear the evidence, and, being sufficiently advised in the premises, the court finds the issues in favor of the plaintiffs, and this being an action for usurious interest secured by the defendant from the plaintiffs, whereby the plaintiffs' demands is ascertained, the court doth assess the amounts due and owing from the defendant to the plaintiffs by reason of said usury at the sum of $831.70. It is therefore considered, adjudged, and ordered by the court that the plaintiffs, S. A. Haseltine and S. C. Haseltine, have and recover of and from the defendant, The Central National Bank of Springfield, Missouri, a corporation, the sum of eight hundred and thirty-one $\frac{70}{100}$ ($831.70) dollars, as aforesaid, assessed by the court, with interest thereon, at the rate of eight (8) per cent. per annum, from date until paid, together with all costs in this behalf laid out and expenced, for which execution may issue."

Motion for New Trial.

And afterwards, to wit, on the 10th day of March, 1897, the same being the 45th day of said January term, the following further proceedings were had in said cause:

(Omitting caption.)

"Now, at this day, comes the defendant, by attorney, and files herein a motion praying the court to set aside the judgment heretofore rendered in the above-entitled cause and grant a new trial of said cause."

And afterwards, to wit, on the 20th day of March, 1897, the same being the 47th day of said January term, the following further proceedings were had in the same cause:

(Caption omitted.)

16 "Now, at this day, comes on to — heard the motion heretofore filed herein by defendant praying the court to set aside the judgment heretofore rendered herein and grant it a new trial. Wherefore, all and singular the same being now seen and heard and fully understood, the court doth overrule said motion in above cause."

Appeal Granted.

And afterwards, on the 27th day of March, 1897, the same being the 53rd day of January term, 1897, the following other proceedings were had in said cause:

(Caption omitted.)

"Now, at this day, the application and affidavit in support thereof, heretofore filed herein by the defendant, praying the court to grant an appeal in the above-entitled cause, coming on for hearing and all and singular the premises being seen, heard, and fully understood, the court doth hereby sustain said application and grants said appeal to the supreme court of the State of Missouri."

Appeal Bond Filed.

And afterwards, to wit, on the 27th day of March, 1897, the same being the 53rd day of the said January term, 1897, the following other proceedings were had in the above-entitled cause:

"Now, at this day, comes the above defendant, by attorney, and files herein its bond in appeal in the above-entitled cause in the sum of seventeen hundred dollars, said bond being signed by the Central national bank, by Geo. M. Jones, president, as principal, and Geo. M. Jones and Geo. D. McDaniel, as sureties thereon. Wherefore, the same being now seen and examined and found to be good
17 and sufficient, it is hereby by the order of the court approved."

Bill of Exceptions.

And afterwards, to wit, on the 5th day of April, 1897, being the 56th day of said January term of said court, the following other proceedings were had in said cause:

"Now, at this day, comes the defendant herein, by attorney, and through the clerk presents to the court *their* bill of exceptions in the above-entitled cause, and the same, being now seen, examined, and found to be correct, is now signed and sealed by the judge of this court and made part of the record and proceedings in the court of the above cause."

And which bill of exceptions is in words and figures as follows:

In the Circuit Court of Greene County, January Term, 1897.

S. A. HASELTINE and S. C. HASELTINE, Plaintiffs,
vs.
CENTRAL NATIONAL BANK, Defendant.

Be it remembered that on this 13th day of March, 1897, the above-entitled cause coming on to be heard before the Hon. James T. Neville, judge of the twenty-third judicial circuit, both plaintiffs and defendant waiving a jury and consenting that said cause be tried before said judge without the intervention of a jury, and C. W. Hamlin, who was appointed as referee in this cause to find the facts upon the matters submitted to him by order of said court
18 making his appointment, submits and files in court his said report, which is in words and figures as follows, viz:

S. A. HASELTINE ET AL., Plaintiffs,
vs.
CENTRAL NATIONAL BANK, Defendant.

To the honorable circuit court of Greene county, Missouri:

I having been appointed referee in the above-entitled cause, to take testimony and make findings in accordance with the following instructions, to wit:

"The referee will ascertain how much cash was actually paid or

furnished to said plaintiffs or any of them by defendant bank of the said sum of $2,240 of the notes sued on.

"Second. How much interest was received or taken out of the various loans or discounts set out in defendant's answer and plaintiffs' petition, if any, at the time said respective loans were made.

"Third. How much interest of the items of interest or discount set out in defendant's answer and plaintiffs' petition was paid by the plaintiffs to said bank, not including amounts reserved out of said loans at the time the same were made.

"The referee will ascertain the entire amount of discount and interest severally charged by the bank in all of the extensions and consolidations and payments from the time of said loans down to and including the notes sued on.

"Fifth. The referee will find all the facts and report his
19 findings and all the evidence to the court."

I beg to submit the following report:

I find from the plaintiffs' petition that they are only asking judgment on account of moneys paid on October 29th, 1894, and subsequent to that time. Consequently I find that all of the moneys paid by defendant to plaintiffs were cash discounts paid at the time of the renewal of the note in controversy, which was admitted to be in excess of eight per cent. interest.

I find that on October 29th, 1894, plaintiffs paid defendant for the extension of the note in controversy for ninety days the sum of—

$46.30, Oct. 29, 1894, on $2,240 note for 90 days' extension.
$39.20, Jan. 30, 1895, on $2,240 note for 60 days' extension.
$39.20, Apr. 17, 1895, on $2,240 note for 60 days' extension.
$39.20, June 6, 1895, on $2,240 note for 60 days' extension.
$39.20, Oct. 9, 1895, on $2,240 note for 60 days' extension.
$57.85, Dec. 11, 1895, on $2,240 note for 90 days' extension.
$57.85, Mar. 13, 1896, on $2,240 note for 90 days' extension.
$57.85, June 14, 1896, on $2,240 note for 90 days' extension.

$415.85 being the amount of the total payments in cash in advance at the time of the several renewals of the $2,240 note.

I find that the note for $2,240 given by plaintiffs to defendant has not been paid.

The costs incurred before me in this case consist only of the charges of the stenographer, Miss Alice T. Barrett, whose bill is hereto attached and amounts to $3.25, and whatever may be taxed in favor of the referee, which he thinks is reasonable at the sum of $25.00. All of which is respectfully submitted, with the testi-
20 mony taken before me, for the consideration and action of the court.

(Signed) C. W. HAMLIN, *Referee.*

(As no objections were made by plaintiffs or defendants to the findings and report of referee, nor exceptions of any kind taken, the testimony submitted with his said report is omitted from bill of exceptions in this abstract of record.)

Defendant prayed the court to give the following instruction:

"It appearing from the evidence in this case that the defendant

bank has not received from the plaintiffs in all the amounts paid to *them* by the plaintiffs more than the sum loaned by the said bank to the plaintiffs, with legal interest thereon, plaintiffs cannot recover on this cause of action."

Which instruction the court refused to give; to which refusal of the instruction thus prayed the defendant, by its counsel, then and there excepted at the time.

Whereupon the court found for the plaintiffs in the sum of $831.70 and rendered judgment therefor.

And on the 17th day of March, 1897, and within four days after the rendering of said judgment, defendant filed *their* motion for a new trial, as follows:

Comes now the defendant and moves the court to set aside the judgment rendered in this cause and grant defendant a new trial—

Because upon the findings of the referee, to which no exceptions were taken, and the same being all the evidence submitted in this case, the judgment should have been for the defendant.

Because said judgment is against the law.

Because said judgment is against the evidence as found by said referee.

21 Because said judgment is against the law and the evidence.

Which said motion the court overruled on the — day of March, 1897; to which ruling and order of the court the defendant then and there duly excepted at the time.

And that the above matters and things and rulings and exceptions may be made part of the record defendants tender this their bill of exceptions and pray that the same may be signed and sealed as such, which is accordingly done.

This April 5th, 1897.

(Signed) JAMES T. NEVILLE, *Judge.*

And afterwards, to wit, on the 20th day of February, 1900, the further following proceedings were had in said cause, viz:

S. A. HASELTINE and S. C. HASELTINE, Respondents,
vs.
THE CENTRAL NATIONAL BANK OF SPRINGFIELD, MO., a Corporation, Appellant.

Appeal from Greene county circuit court.

Now, at this day, come again the parties aforesaid, by their respective attorneys, and the court here, being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment aforesaid, in form aforesaid, by the said Greene county circuit court rendered, be reversed, annulled, and for naught held and esteemed, and that the said appellant be restored to all things which it has lost by reason of the said judgment. It is further considered and adjudged by the court that the said cause be remanded to the said Greene county circuit court for further proceedings to be had therein, in conformity with the opinion of this court

22 herein delivered, and that the said appellant *delivered and that the said appellant* recover against the said respondents

its costs and charges herein expended and have therefor execution. (Opinion filed.)

Which said opinion is in words and figures as follows, to wit:

In the Supreme Court of Missouri, October Term, 1899, Division No. 1.

S. A. HASELTINE ET AL., Respondents,
vs.
CENTRAL NATIONAL BANK, Appellant. } No. 8867.

This case is the counterpart of the case of Central National Bank *vs.* Haseltine, just decided. It is an action under section 5198, R. S. U. S. 1878, to recover $831.70, that being double the amount of the usurious interest paid by the plaintiffs to the defendant on the note for $2,240, on which the defendant obtained judgment against the plaintiffs in the other case referred to. It is conceded that the plaintiffs paid the defendant the sum of $415.85 to procure extensions of the note for $2,240, from time to time, between October 29th, 1894, and June 14th, 1896. It is also conceded that such payments were for usurious interest, and that the defendant in accepting and receiving the usury has violated the Federal statute. The sole defense is that the party who has paid usurious interest cannot maintain an action, under that statute, to recover twice the amount so paid until he has paid the principal sum due, or, at least, unless he tenders the principals, and it is admitted that the plaintiffs have not done this.

In support of this contention the defendant relies upon Wheaton *v.* Hubbard, 20 Johns, 293; Hawkins *v.* Welch, 8 Mo., 490; Rutherford *v.* Williams, 42 Mo., 18; Livingston *v.* Burton, 43 M. A., 272, and McBroom *vs.* Scottish Investment Co., 153 U. S., 318.

In the New York case it was pointed out that the statute of that State permitted a borrower to recover the excess of interest over the legal rate paid in an action of debt if the suit was begun
23 within one year, and if the borrower did not sue within such year, then any other person could institute such an action within the second year, and one-half of the recovery went to the person suing and the other half to the poor of the town in which the offense was committed. It was also shown that at common law, under the statute of 12 Anne, ch. 16, "the party receiving more than the legal rate of interest forfeited the treble value of the moneys or things lent," to be recovered in an action for money had and received; "but the party injured cannot recover any part of the principal and legal interest, and to entitle him to maintain the action he must show that he has done all that equity requires. Bacon, Usury, G. I. Term Rep., 153." And it was held that the statutory remedy did not supersede the common-law remedy, but that the remedies were concurrent. The suit was not brought until more than two years after the offense was committed, and it was held that the action was under the common-law remedy, and that at common law the suit could not be maintained so long as the principal and legal in-

terest remained unpaid, but, as the defendant had not pleaded or proved that it had not been paid, it would be inferred that it had been paid.

Hawkins *v.* Welch, 8 Mo., 490, was an action to recover usurious interest paid, and Wheaton *v.* Hubbard, 20 Johns, 20, was followed. The whole of the principal had not been paid, and the court said: "And if the plaintiff now obtains a judgment against the defendant for $90 and collect that money from the said defendant, the plaintiff may himself become insolvent and be unable to pay the principal, or rather what remains of the principal."

Rutherford *v.* Williams, 42 Mo., 18, was a suit by a grantor against the *cestue que trust* in a deed of trust for the value of the prop-
24 erty sold under the deed of trust, less the debt secured thereby, which it was alleged had been fraudulently foreclosed. There was an allegation that usurious interest had been exacted. In the course of the opinion it was noted that usurious interest once paid could not be recovered (Ransom *v.* Hays, 39 Mo., 445), but it was held that equity would not aid a borrower except on condition that the principal and legal interest were paid.

Livingston *v.* Burton, 43 M. A., 272, was an injunction to restrain a sale of real estate under a mortgage and for a cancellation of the mortgage. The circuit court found that usurious interest had been paid which equalled the amount of the debt, and therefore cancelled the mortgage. The Kansas City court of appeals reversed that decree, and held that usurious interest once paid could not be recovered or applied in extinguishment of the principal, and that the plaintiff was not entitled to have the mortgage in question cancelled unless he offered to pay what is due on the principal debt, "leaving out of consideration the amount of usurious interest paid."

McBroom *v.* Scottish Investment Co., 153 U. S., 318, was an action under the statute of New Mexico by a borrower to recover double the amount alleged to have been paid by him to the lender as usurious interest. The statute of New Mexico in this regard is very much like the national banking act, except that the limitation is three years instead of two. The plaintiff borrowed of the defendant $65,000, evidenced by his notes maturing at stated times, and secured it by a mortgage on land, live stock, &c. For securing the loan the plaintiff paid the agent of the defendant $6,500, which the defendant knew of and afterwards received from the agent. The plaintiff paid one interest note and then quit paying, but at once sued the de-
fendant for $13,000, double the $6,500 so paid as usury. He
25 recovered judgment for that amount in the lower court, but on appeal the supreme court of New Mexico reversed the judgment below and held "that the borrower was not entitled to recover the statutory penalty while any portion of the amount really loaned, with legal interest, after crediting all payments, remained unsatisfied." The case then went to the Supreme Court of the United States, where Mr. Justice Harlan delivered the opinion of the court. After calling attention to the similarity between the statute of New Mexico and the national banking act, and holding that the

taking of usurious interest did not cut off a right to recover the sum actually loaned, he said:

"The contract of loan not being void, except as to the excess of interest stipulated to be paid, the question arises whether the lender is liable to an action for the penalty prescribed by the statute so long as the principal debt, with legal interest thereon, after deducting all payments, is unpaid. We are of opinion that this question must be answered in the negative. While under the statute the mere charging of usurious interest may be a misdemeanor for which the lender can be fined, whether such usurious interest is or is not collected or received, the borrower has no cause of action until usurious interest has been actually collected or received from him. Such is the mandate of the statute; and interest cannot be said to have been collected or received in excess of what may be lawfully collected and received until the lender has, in fact, after giving credit for all payments, collected or received more than the sum loaned, with legal interest. Such, in our judgment, is the true construction of the statute of New Mexico. In this view the limitation of three years within which the borrower may sue for double the amount of usurious interest collected and received from him does not commence to run, and therefore the cause of action does
26 not accrue until the lender has actually collected or received more than the original debt, with legal interest. These conclusions are supported by adjudged cases.

In Duncan *v.* First Nat. Bank of Mount Pleasant, in the district court of the United States for the western district of Pennsylvania, it was said: 'From the origin of the loan, from the retaining of the first discount through all the renewals up to the time of final payment of the principal or up to the time of entering judgment, there is *locus penitentiæ* for the party taking the excessive interest. Any time till then he may consider the excessive interest paid on account of the loan, and so apply it and lessen the principal. * * * Up to that time he may make this election. When payment is actually made or judgment entered the election is made, and if, as in these cases, judgment is entered for the face of the amount of the notes or full amount of the loan, or payment is taken in full without any reduction by taking out the excessive interest, the cause of action is complete.'

Thompson's National Bank Cases, 360, 362.

In Stevens *v.* Lincoln, 7 Met., 525, 528, which was an action under a statute of Massachusetts authorizing suit to recover threefold the amount of interest paid, it being alleged that interest had been paid at a greater rate than the law allowed, the court said: 'In regard to the payment of $1,458.91, whether this was a payment of the usurious interest or a part of it, we are of opinion that while the usurious interest is unpaid there remains the *locus penitentiæ*; that the party may relinquish it and recover for the balance of his debt, the contract not being rendered void by the statute; and in the absence of proof as to any appropriation of a partial payment the law will apply a payment to the valid demand rather

than to the illegal one, and the balance which remain-
27 unpaid, if it exceeds the usury agreed to be paid, includes the usury; so that, on one side, the debtor shall not recover back any part of that which he honestly owed by the allegation on his part that the payment made by him was the payment of the usury; nor, on the other hand, will the law permit the creditor to secure to himself the avails of his illegal contract, and when he sues for the balance due on the contract to aver that the usurious interest was contained in the previous payment, and that the residue is justly due.' The same rule was affirmed in Saunders *v.* Lambert, 7 Gray, 484, 486.

So in Harvey *v.* National Life Ins. Co., 60 Vermont, 209, 211: 'As the result of that transaction the plaintiff went away with nine hundred dollars in money, all he had ever received from the defendant as his own money, and the defendant with the plaintiff's note for $1,000. * * * Hence the one-hundred-dollar usury entered into and became a part of the mortgage note. The payment by the plaintiff and by Mrs. Hardaker, prior to the time of taking up the note, would in law be applied towards the payment of the legal portion of the note. * * * All the payments made by her, as well as those made by the plaintiff, up to the final payment, were in law to be applied towards the liquidation of the legal portion of the note. Hence the plaintiff is entitled to recover what was then legally due upon the note after applying the payments made thereon in liquidation of the legal portion of the note with interest.'

To the same effect are the following authorities: Kendall *v.* Crouch, 88 Kentucky, 199, 202; Smith *v.* Robinson, 10 Allen, 130, 132; Hawkins *v.* Welsh, 8 Missouri, 490, 492; Hall *v.* Fairfield Bank, 30 Nebraska, 99, 102; Jackson *v.* Garner, 79 Georgia, 415.

In Wright *v.* Laing, 3 B. & C., 165, 169, which was an action to recover the penalties of the statute of usury, Abbott, C. J., said:
28 'None of the payments were appropriated by either party at the times of payment. If the law ought now to make such an appropriation as the pleader has supposed in this court, the court will be sustained by the proof; otherwise not.

We think the law ought now to make such an appropriation; * * * and such an appropriation works no prejudice to the party; it leaves him only where by his own conduct he placed himself, and in the case I have put of the payment of one bill and non-payment of the other, if an action for the penalties of the statute should be brought, the same principle of law would protect the defendant by applying the payment of the first bill to the legal demand and not permitting the then plaintiff to apply it to the illegal demand—that is, to the loan and interest, although it be precisely of the same amount, because, peradventure, the lender might repent the illegal bargain and refuse the full amount of the second bill, and the law will allow him the opportunity of doing so, that he might not be deemed a receiver of usurious interest without clear evidence that he had not only bargained to receive, but had actually received such interest.

And if the law will make this appropriation of the payment in

the two cases that I have put, in the one instance against the lender, and to prevent him from enforcing an illegal bargain, and in the other instance in favor of the lender, and to protect him from being subject to a penalty for an illegal bargain only, it seems very plainly to follow that a similar appropriation ought to be made by law in the case before the court; * * * and this, in effect, is only saying that where a person has two demands, one recognized by law, the other arising on a matter forbidden by law, and an unappropriated payment is made to him, the law will afterwards ap-
29 propriate it to the demand which it acknowledges, and not to the demand which it prohibits.'

For the reasons stated, we are of opinion that this action cannot now be maintained under the statute, and consequently the court below properly reversed the judgment of the court of original jurisdiction and entered judgment in favor of the defendant.

It is proper to say that the questions determined in Barnett *v.* National Bank, 98 U. S., 555; Driesbach *v.* National Bank, 104 U. S., 52; Stephens *v.* Monongahala Bank, 111 U. S., 197, and Carter *v.* Carusi, 112 U. S., 478, do not arise here.

No question is presented in the case before us as to whether the borrower, when sued for the principal debt and legal interest, may or right set off the amount of any penalty prescribed by the statute of New Mexico.

The judgement of the supreme court of the Territory is therefore affirmed."

This must be taken as an authoritative interpretation of the meaning of section 5198, Rev. Stats. U. S. 1878, and, as that is a Federal statute, the construction thereof by the Supreme Court of the United States must be followed by this court. Under the rule there laid down, the plaintiffs herein are not entitled to maintain this action, for there is no allegation or proof that they have paid or offered to pay the debt actually due—that is, the amount actually received by the plaintiffs from the defendant.

It is contended, however, by the plaintiffs that the decision of the Supreme Court of the United States in Brown *v.* National Bank, 169 U. S., 416, establishes a different rule and authorizes a recovery in this case. This is a misapprehension.

Mr. Justice Harlan delivered the opinion in the McBroom
30 case and also in the Brown case, and in the Brown case he cites and reaffirms the McBroom case. In the Brown case it did not appear how much of the usurious interest had been paid and how much was included in the face of the note. It was argued, however, that including it in the face of the note was a payment, but the Supreme Court held that not to be the law. The rule is clearly laid down, however, that if usurious interest is included in the face of the note it should, in a suit on the note, be credited on the note or eliminated from the note, but no action could be maintained under section 5198 to recover it because it had not been actually paid, and that only usurious interest actually paid could be recovered under that section.

This is all that the Brown case decides. The question whether an

action for usurious interest actually paid could be maintained without allegation and proof that the debt itself had been paid or without an offer to pay it was not raised, discussed, or passed on in the Brown case, except so far as approving the McBroom case, which, so held, may be regarded as an inferential determination of that question, and, so regarded, it cuts off the plaintiffs' right to maintain this action.

Thus it will be seen that the Supreme Court of the United States puts the same construction upon the Federal statute that courts of equity and the courts of law, where the statute 12 Anne is in force, place upon the rights of the borrower and lender—that is, that courts will neither aid the lender to collect usurious interest promised to be paid nor will they aid the borrower to recover such usurious interest actually paid unless he has paid or offers to pay the amount of money actually received from the lender.

31 The judgment of the circuit court is therefore reversed and the cause remanded to be proceeded with in accordance herewith. All concur.

W. C. MARSHALL, *J.*

And afterwards, to wit, on the 1st day of March, 1900, the further following proceedings were had in said cause, viz:

S. A. HASELTINE ET AL., Respondents,
vs.
CENTRAL NATIONAL BANK, Appellant.

Come now the said respondents, by attorneys, and file their motion for rehearing herein.

Which said motion for rehearing is in words and figures as follows, to wit:

In the Supreme Court of Missouri, October Term, 1899.

S. A. HASELTINE ET AL., Pl'fs, Respondent-,
—
THE CENTRAL NATIONAL BANK, Appellant. } No. 8867.

Motion for Rehearing.

Now come respondents in the above-entitled case and ask this honorable court for a rehearing of the same:

I.

32 For the reason that the opinion rendered by this honorable court is in direct conflict with the leading, controlling, and only cases construing the U. S. statute upon which this suit is based, to some of which your honors were not referred, and others of which your honors makes no mention.

To wit: The supreme court of Pennsylvania, in 1872, by Judge Sharswood, in Brown *vs.* Second National Bank, 72 Pa. St., 209, and by the same court reaffirmed in the (98 Pa. St., 65) Lebanon National Bank *vs.* Karmay.

Also, the supreme court of Texas, in 1887, construed said section in the case of Stout *et al. vs.* Ennis National Bank, 69 Texas, —, in conflict with your honors' opinion, 8 S. W. Rep., 808, as also were the following cases: Also by the court of errors of New Jersey, in 1890, National Bank *vs.* Carpenter, 19 Atlantic Rep., 181; also Lynch *vs.* Bank, 22 W. Va., 994.

Also by the supreme court of Kentucky in Henderson National Bank *v.* Alver, 15 S. W., 132.

Also by the supreme court of Nebraska, in 1893, and again in 1895. (See First National Bank *vs.* Smith, 54 N. W. Rep., 254.) Also Exeter National Bank *vs.* Orchard, 61 N. W. Rep., 833.

In this last decision the supreme court of Nebraska says: "There is no case cited or to be found to the contrary." It was decided in 1895, a year after the McBroom case of New Mexico, on which your honors rely, which was decided March, 1894; and that court says: "There is no other reasonable construction of the section 5198."

Also a long line of cases to the same effect: 98 B. C., 244; 3 S. E. Rep., 484, etc.

33 This court has overlooked the leading fact in the case at bar, namely, that the usurious interest was demanded and paid in cash at the time of the several renewals of the notes.

2nd. And not being incorporated in the note, or deducted from the loan, as the $6,500 was from the $65,000 in the New Mexico case. See facts stated in 30 Pacific Rep., 859.

3rd. The New Mexico statute differed from the United States statute, section 5198, in not forfeiting the legal interest, but only the excess. Hence McBrown had paid no excess, hence no usury.

III.

Your honors' decision is against the United States Supreme Court decision in Brown *vs.* Marion National Bank, 169 U. S., 416.

IV.

The decision in this case is in direct conflict with section 5198 United States Statutes, which says that suit shall be begun within two years from the usurious transaction (not from payment of the principal debt).

V.

Said decision destroys the effect of the United States statute, or plaintiffs, respondents, would be barred by the statute of limitations against another suit.

VI.

This decision is in conflict with Brown *vs.* Marion National Bank, the last utterance of the Supreme Court of the United States construing section 5198 of the United States statute.

See 169 U. S. Rep., 416.

34 "If at any time the obligator actually pays usurious interest as such, the usurious transaction must be held to have

then and not before occurred, and he must sue within two years thereafter."

Can the plaintiff be debarred from a right to sue when his cause of action is not complete?

If your honor's decision is correct, the statute is an *an*nul-ity. In McBroom's case, the borrower gave his note for $65,000 and only received $58,500. That was a case of incorporating the usury in the note.

It differs from this case before you. See facts in the New Mexico, 30 Pacific Rep., 859. Here the interest was actually paid, and differs from the McBroom case.

The Brown and the McBroom cases, — by the Supreme Court of the U. S., do not conflict with each other or the State cases above referred to, but the Brown case shows the difference, in effect, between usury included in the note and money actually paid as usury. The latter gives the right of action under all the decisions.

VII.

Your honor has overlooked all the cases by the several supreme courts of other States construing section 5198, all of which are harmonious to the effect that the principal does not have to be paid before suit for usury actually paid, and the statute of limitation begins to run from the time of actual payment of the usury as such.

In Scotch Mortgage Company *vs.* McBroom, decided in the supreme court of New Mexico, it will be seen in 30 Pacific Reporter, 859, see page 861, that McBroom gave his note for $65,000, but only took with him $58,500.

That $6,500 was reserved or deducted from the note—not actually paid, as in the case of our renewals, where our note remained the same. We paid cash to get it extended from time to time.

The facts are different, and the law is decided to be different by all the courts, save and except the mistake your honor makes in the case at bar, should you not give a new hearing.

So in Brown *vs.* Marion National Bank, 169 U. S., 416, the Supreme Court of the United States says:

"If the note when sued on includes usurious interest or interest upon usurious interest agreed to be paid, the holder in due time may elect to remit such interest, and it cannot then be said that usurious interest was paid to him. McBroom against Investment Co., 153 U. S., 318."

"If at any time the obligee actually pays usurious interest as such, the usurious transaction must be held to have then, and not before, occurred, and he must sue within two years thereafter."

Thus the McBroom case, on which your honor relies, is clearly distinguished from the case at bar, and we must respectfully request this honorable court to grant a rehearing of the above-entitled case.

Very respectfully, RATHBUN & HASELTINE,

Attorney- for Respondent.

Argument.

36 The decision in this case is in direct conflict with every other decision on the United States statute, section 5198, that has been rendered in the various courts of last resort.

The court seems to have overlooked the decision of the supreme court of Pennsylvania construing section 5198 U. S. *In* Lebanon National Bank *vs.* Karmony, 98 Pa. St., 65, decided in 1881, expressly decides:

"Suit may be brought for the penalty, paying the usurious interest at any time after the said payment, even though the indebtedness on which the usurious interest was paid has not been discharged."

2nd. The court overlooked the case decided by the supreme court of Texas in 1887, construing section 5198 United States statutes. It says:

"The appellee insists that the right to the penalty could not attach until the entire debt was paid, and that until this occurred it had the power and the right to abandon its claim for the usurious interest, and thus defeat the appellant's right to the penalty."

The rule is this well stated by the supreme court of Massachusetts in the case of Stevens *vs.* Lincoln, 7 Metcalf, 528:

"While the usurious interest remains unpaid there remains the *locus penitentiæ*. Where, however, the parties, as they did in this case, appropriate the payment of usurious interest *locus penitentiæ* can no longer exist, for the offense has been consummated, the rates of interest has been paid, and the right to the penalty fixed."

3rd. The supreme court of Nebraska has construed this United States statute, section 5189, on same question twice.

In the 54 N. W. Rep., 254, case of First Nat. Bank *vs.* Smith, the supreme court in 1893 says:

37 "The question presented involves the true interpretation of the proviso clause of section 5198 of the Revised Statutes of the United States.

"It does not refer to the time the contract is entered into, nor is it the payment of the principal sum borrowed which gives the right to sue for the penalty. The receipt of the illegal interest is the foundation of the borrower's right to recover the penalty, and the actual payment of the interest in excess of the legal rate is the usurious transaction referred to in the section.

"The period of limitation begins to run from the time the cause of action accrues.

"If the interpretation for which plaintiff (appellants) contends should be adopted, then it would follow that a suit to recover the penalty for the taking of usurious interest by a national bank cannot be maintained until the loan is fully paid off.

"Stated differently, one who has paid large sums as illegal interest on a loan and is unable to pay the entire debt is not entitled to the benefit of the section.

"Such was not the intention of Congress, nor is it the fair and reasonable import of the language of the section.

"The right to maintain the action to recover the penalty prescribed by said section 5198 accrues as soon as the unlawful interest is paid, and the two years' limitations begin tor un from the time such payment was made." And cites a number of cases.

Brown *vs.* Second National Bank, 72 Pa. St., 209, Judge Sharswood, for the supreme court of Pennsylvania, in 1872, in
38 construing section 5198, United States statutes, says:

"It is actual payment on the foot of the usurious contract, either in part or in whole, which consummates the usury and from which the limitations of the action for the penalty commences to run."

This followed in 1890—

By the court of errors of New Jersey in National Bank *vs.* Carpenter, 19 Atlantic Reporter, 181; 5198, United States statutes: "The statutes of limitation begins to run from the time the interest is paid."

In Henderson *vs.* Second National Bank, Kentucky supreme court, 1891, section 15, S. W. Rep., 1321, says:

"United States statute, section 5198, gives a right within two years, and is: 'The date runs from the usurious transaction and not from payment of the note.'"

Same, Lynch *vs.* Bank, 22 W. Va., 554.

Say "the statute of limitations is two years from the payment of interest."

"Each payment of illegal interest must be regarded as a transaction, within the intent of the statute; and when the payment is made or actually occur- the two years' limitation begin- to run, as to that payment, from that time, and so on each successive payment or renewal of the same loan."

Very respectfully, RATHBUN & HASELTINE.

39 And afterwards, to wit, on the 14th day of March, 1900, the further following proceedings were had in said cause, viz:

S. A. HASELTINE ET AL., Resp.,
v.
CENT. NAT. B'K, App.

Now, at this day, the court having fully considered and understood the motions heretofore filed for rehearing herein, doth order that said motions be, and the same are hereby, overruled.

And afterwards, to wit, on the 5th day of April, 1900, the further following proceedings were had in said cause, viz:

S. A. HASELTINE ET AL., Respondents,
vs.
CENTRAL NATIONAL BANK, Appellant.

Now, at this day, there is presented to the Honorable Theodore Brace, presiding judge of division No. 1 of the supreme court of the State of Missouri, in chambers, a writ of error to the Supreme Court

of the United States, a citation directed to said appellant, citing and admonishing it to appear at a Supreme Court of the United States on the 5th day of May, 1900; an assignment of errors, and an obligation for costs; which said writ of error is allowed.

Which said assignment of errors is in words and figures as follows, to wit:

40 In the Supreme Court of the United States, October Term, 1900.

S. H. & S. C. HASELTINE, Appellants in Error,
vs.
THE CENTRAL NATIONAL BANK, Respondent in Error.

Assignment of Error and Prayer for Reversal.

Now come appellants in error and state to your honor that error have been committed by the supreme court of Missouri against the rights of your appellants in the decision against appellants, in this:

I.

Appellants were entitled to the rights they claim in this petition under section 5198 of the Revised Statutes of the United States in 1878, which is denied by the decision in this case by the supreme court of Missouri.

II.

Also said decision of the supreme court of Missouri denies to appellants their claim under the laws of the United States as construed by the Supreme Court of the United States in case of Brown *vs.* Marion National Bank, 169 U. S., 416.

III.

The supreme court of Missouri denies the rights to the appellants under the United States statute, section 5198, as construed by every court of last resort in the United States, some of which are:

See Nebraska First National Bank *vs.* Smith, 54 N. W. Rep., 254.

See, in Pennsylvania, A. Brown *vs.* Second National Bank, 72 Pa., 209.

41 See, in New Jersey, National Bank *vs.* Carpenter, 19 Atlantic R., 181.

See, in West Virginia, Lynch *vs.* Bank, 2 W. Va., 994.

See, in Kentucky, Henderson National Bank *v.* Alver, 15 S. W., 132.

See, in Texas, Stout *vs.* Ennis National Bank, 69 Texas, 83, 84, 88; W. R. P., 808.

See, in Nebraska, Exeter National Bank *v.* Orchard, 61 N. W. Rep., 833.

See, in Pennsylvania, Lebanon National Bank *vs.* Karmany, 98 Pa. St., 65.

Also U. S. Supreme Court, Brown *vs.* Marion National Bank, 169 U. S., 416.

Appellants, being thus deprived of their rights, ask that this case be reversed and appellants be entitled to their rights under the — United States.

S. H. HASELTINE &
GEO. S. RATHBUN*E*.

And which said bond is in words and figures as follows, to wit:

UNITED STATES OF AMERICA, } *sct:*
Western District of Missouri, }

In the Circuit Court of the United States for the Southern Division of said District.

S. A. & S. C. HASELTINE }
against
THE CENTRAL NATIONAL BANK. }

I enter myself surety for costs in said case and undertake and promise to pay all costs and fees which may accrue to the
42 defendant in this action, or to any officer of this court or other person entitled thereto, and in default of payment by the plaintiffs of any fees due or costs ordered or adjudged to be paid by them, I agree and stipulate that fee bill or execution may issue against my property for any costs taxed against the plaintiffs or for any fees due by them.

Witness my hand and seal this 19th day of March, A. D. 1900.

G. A. H. CLARKE. [SEAL.]

Executed and acknowledged before me this 19th day of March, A. D. 1900.

[SEAL.] SARAH A. LATHIM,
U. S. Clerk,
By REUBEN Y. THOMSON, *D. C.*

UNITED STATES OF AMERICA, *sct:*

I, G. A. H. Clarke, a citizen of the State of Missouri and obligor in the above undertaking, do solemnly swear that I am a resident of the county of Greene, in said State; that my post-office is in the town of Springfield therein; that I own real estate, over and above all my debts, liabilities, and exemptions under homestead and appraisement laws, to the amount of fifteen thousand and no / 100 dollars, subject to execution in the State of Missouri.

G. A. H. CLARKE.

Subscribed and sworn to before me this 19th day of March, A. D. 1900.

[SEAL.] SARAH A. LATHIM,
U. S. Cir. Court,
By REUBEN Y. THOMSON, *D. C.*

I certify that the above surety is, in my opinion, sufficient to secure the costs in said case.

GEO. S. RATHBUN,
S. A. HASELTINE,
Attorney-for Plaintiff-.

43 STATE OF MISSOURI, *sct:*

I, Jno. R. Green, clerk of the supreme court of the State of Missouri, certify that the foregoing is a full, true, and complete transcript of the record and proceedings in the cause entitled S. A. Haseltine *et al. vs.* Central National Bank, as fully and complete as the same appear- of record and on file in my said office.

In witness whereof I have hereunto set my hand as clerk and affixed the seal of said court. Done at office, in the city of Jefferson, this 16th day of April, A. D. 1900.

[Seal of the Supreme Court of Missouri.]

JNO. R. GREEN,
Clerk Supreme Court of Missouri.

Endorsed on cover: File No., 17,759. Missouri supreme court. Term No., 279. S. A. and S. C. Haseltine, plaintiffs in error, *vs.* The Central National Bank of Springfield, Missouri. Filed May 12th, 1900.